
AUDIT REPORT



UTICA MUNICIPAL HOUSING AUTHORITY

Utica, New York

2006-NY-1005

February 21, 2006

OFFICE OF AUDIT
NEW YORK/NEW JERSEY



Issue Date February 21, 2006

Audit Case Number 2006-NY-1005

TO: Joan Spilman, Director, Public Housing, 2CPH, and
Rosalinda Lamberty, Director, Multifamily Housing, 2CHM

FROM: *Edgar Moore*
Edgar Moore, Regional Inspector General for Audit, 2AGA

SUBJECT: Utica Municipal Housing Authority, Utica, New York; Operational and
Administrative Weaknesses Have Resulted in Unsupported and Ineligible
Expenditures

HIGHLIGHTS

What We Audited and Why

We audited the Utica Municipal Housing Authority (Authority) pertaining to selected general operations of its low-rent housing program. We selected the Authority based upon the results of an analysis conducted by the region that identified operational weaknesses, which have slowed progress and negatively impacted the efficiency and effectiveness of the Authority's administration of its programs.

Our audit objectives were to determine whether the Utica Municipal Housing Authority 1) had a financial management system in place to adequately account for and safeguard funds received, 2) properly disbursed operational funds for health benefits for retired employees, 3) complied with applicable procurement requirements, and 4) earned the administrative fees it was paid to perform as contract administrator for the Section 8 program.

What We Found

The Authority has a financial management system in place to adequately account for and safeguard the funds received; however, it did not properly disburse

operational funds for health benefits for retired employees. From January 1, 2003, through June 30, 2005, the Authority paid \$511,480 for unauthorized retiree medical insurance. Not only were these costs not necessary or reasonable as required by U.S. Department of Housing and Urban Development (HUD) regulations, but they were incurred in direct violation of the Authority's own board-established policy. Since the costs were not authorized, they are considered to be ineligible.

The Authority did not properly comply with applicable procurement and contracting requirements. It (1) procured legal services without executing a contract, (2) made contract payments without adequate supporting documentation, (3) failed to enforce contract provisions for elevator construction services, and (4) did not ensure that all procurements were conducted in a manner allowing for full and open competition. Therefore, assurance that costs incurred for procured contract services were proper and reasonable has been diminished, and the Authority has incurred questionable costs of \$140,116.

In addition, the Authority did not completely earn the administrative fees it was paid to perform as contract administrator for the Section 8 program. By failing to conduct required oversight and on-site management reviews, the Authority did not demonstrate that it fully performed its required monitoring responsibilities as a contract administrator. The Authority received \$279,282 in administrator fees from HUD for fiscal years 2003 and 2004.

What We Recommend

We recommend that HUD require the Authority to establish controls and procedures to ensure compliance with all applicable board, procurement, and contract administration policies and procedures. We also recommend that the Authority be required to submit supporting documentation to justify all unsupported costs so that HUD can make an eligibility determination. Further, the Authority should be required to reimburse the program from nonfederal funds all amounts classified and determined to be ineligible. In addition, the Authority should enforce the damage clause of its elevator contract and put all penalty income received to better use.

For each recommendation without a management decision, please respond and provide status reports in accordance with HUD Handbook 2000.06, REV-3. Please furnish us copies of any correspondence or directives issued because of the audit.

Auditee Response

We discussed the results of our review during the audit and at an exit conference held on February 1, 2006. Authority officials provided their written comments during the exit conference. Appendix B of this report contains the Authority's comments, along with our evaluation of the comments. The Authority's comments included a number of attachments/documents that were too voluminous to be included in our final report, but will be provided to your office.

TABLE OF CONTENTS

Background and Objectives	5
Results of Audit	
Finding 1: The Authority Provided Unauthorized Medical Insurance Benefits to Retirees	6
Finding 2: The Authority’s System for Procuring Contracts Is Deficient	9
Finding 3: The Authority Did Not Fully Perform Monitoring Responsibilities as a Contract Administrator for HUD	14
Scope and Methodology	17
Internal Controls	18
Appendixes	
A. Schedule of Questioned Costs and Funds to Be Put to Better Use	20
B. Auditee Comments and OIG’s Evaluation	21

BACKGROUND AND OBJECTIVES

The Utica Municipal Housing Authority (Authority) was organized pursuant to the Housing Act of 1937 and the laws of the State of New York. The primary objective of the Authority is to provide decent, safe, and sanitary housing for eligible low-and moderate-income residents of Utica, New York. The Authority owns and manages eight federally funded projects with 932 low-rent units. It also administers Section 8 programs consisting of 174 housing choice vouchers and 515 units relating to seven Section 8 11B projects. In addition, the U.S. Department of Housing and Urban Development (HUD) awarded the Authority a HOPE VI grant in the amount of \$11,501,039, effective July 3, 2003. The grant funds will be expended for developing public housing replacement units and other housing units within the city of Utica.

We selected the Authority for audit based on many factors, including indicators from monitoring reports, media coverage concerning financial difficulties, analysis of Authority data, discussions with former Authority employees, and our prior knowledge of and experience with the political structure and business activities in the local area. This analysis identified operational weaknesses, which slowed progress and negatively impacted the efficiency and effectiveness of the Authority's administration of its programs.

The overall objectives of our audit were to determine whether the Authority generally complied with HUD program regulations, policies, and requirements in administering selected operations of its low-rent housing program. We determined whether the Authority 1) had a financial management system in place to adequately account for and safeguard funds received, 2) properly disbursed operational funds for health benefits for retired employees, 3) complied with applicable procurement requirements, and 4) earned the administrative fees it was paid to perform as contract administrator for the Section 8 program.

RESULTS OF AUDIT

Finding 1: The Authority Provided Unauthorized Medical Insurance Benefits to Retirees

Contrary to policy enacted by its board and applicable federal regulations, Authority management allowed for the payment of certain medical insurance costs provided to retirees that were not authorized or necessary. The unauthorized costs were incurred because Authority management did not establish controls to ensure that policies and procedures put into practice conform to the provisions of enacted board resolutions. Consequently, for the period January 1, 2003, through June 30, 2005, the Authority paid \$511,480 for retiree medical insurance costs, which are considered ineligible.

History of Board-Adopted Policy

Board Resolution No. MHA040705-12a, adopted on April 7, 2005, addresses issues and sets policy regarding retiree medical insurance benefits. The resolution clarifies the provisions of previously established board policies, dating back to 1994, that relate to benefits afforded to various classes of the Authority's retirees. The resolution stated the following:

- As a means of settling certain litigation, by resolution dated December 27, 1994, the board authorized the amendment to the collective bargaining agreement between the Authority and the Civil Service Employee Association (CSEA) to provide that, upon a retiree reaching the age of 65, Medicare would become the primary health insurance coverage but that the Authority would pay the full cost of a singular Medicare supplemental policy to Civil Service Employee Association affiliated retirees who had retired on or before December 27, 1994.
- The December 27, 1994, resolution extended the same benefit to non-Civil Service Employee Association affiliated retirees who had retired on or before December 27, 1994, reserving to the Authority the right to alter or delete this benefit regarding non-Civil Service Employee Association retirees.

The December 27, 1994, board resolution did not authorize the payment of any medical insurance benefits to medicare eligible retirees who retired after December 27, 1994, nor did it provide that prescription and dental riders would be paid for any medicare eligible retirees. The resolution only provided for the payment of a singular Medicare supplemental policy for those who retired before December 27, 1994. Thus, payment for singular medicare supplement insurance for those who retired after December 27, 1994, and the provision of dental and

prescription riders for any medicare eligible retiree before or after the December 27, 1994, resolution were not authorized.

Unsupported Retiree Health Insurance Benefits

Contrary to the above board resolutions, during the period January 1, 2003, through June 30, 2005, the Authority paid for the costs of medical insurance premiums, including riders for dental benefits and prescription drug coverage, for Civil Service Employee Association affiliated and non-Civil Service Employee Association affiliated retirees who did not meet the board requirements.

A summary of the unauthorized costs incurred is shown as follows:

Description	2003	2004	January to June 2005	Total
Pre-Dec. 27, 1994, Retirees' Dental & Prescription Riders	\$104,692	\$114,661	\$57,631	\$276,984
Post-Dec. 27, 1994, Retirees' Dental & Prescription Riders	\$43,890	\$50,711	\$29,776	\$124,377
Post-Dec. 27, 1994, Retirees' Medical Insurance Premiums	\$39,395	\$44,833	\$25,891	\$110,119
Totals	\$187,977	\$210,205	\$113,298	\$511,480

OMB Circular A-87 and the annual contribution contract require operations to be conducted in a manner that promotes economy and efficiency and that requires costs to be necessary and reasonable. Since these retirees did not meet the board requirements, these payments amounting to \$511,480 are not necessary and reasonable and should be considered to be ineligible.

Controls Needed

Although the Authority has taken steps to address the issue of retiree medical insurance benefits by trying to clarify its board resolutions going forward, notifying retirees that the Authority will no longer pay certain medical insurance, dental and prescription riders, significant scarce resources were expended on unauthorized items. Accordingly, management needs to establish better controls to ensure that board policies and procedures are implemented in a timely manner in accordance with stated directives to prevent these types of payments in the future.

Recommendations

We recommend that the director of HUD's Office of Public Housing instruct the Authority to

- 1A. Establish controls to ensure that policies enacted by its board are fully implemented in a timely manner.
- 1B. Reimburse the low-income housing program from nonfederal funds the \$511,480 in medical benefits paid to Civil Service Employee Association and non-Civil Service Employee Association retirees who did not meet the board requirements for receiving health, dental, and prescription benefits.

Finding 2: The Authority's System for Procuring Contracts Is Deficient

The Authority's procurement and contract award activities did not always comply with HUD regulations and requirements. The Authority (1) procured legal services without executing a contract, (2) made contract payments without adequate supporting documentation, (3) failed to enforce contract provisions for elevator construction services, and (4) did not procure auditing services in a manner allowing for full and open competition. These deficiencies can be attributed to the Authority's weak system of controls over the processing of procurement actions. As a result, the Authority incurred questionable costs of \$140,116 and could not ensure that costs incurred for procured contract services were reasonable and necessary.

Our review of procurement activities focused on actions, which occurred during the audit period of January 1, 2003, through April 30, 2005. We selected a nonstatistical sample of six contracts and/or procurement activities for review. Included in the sample were professional service contracts relating to legal, consulting, auditing, and fee accounting services. In addition, one construction contract was selected for testing because of deficiencies identified during our survey. Our review disclosed that four of the six contracts reviewed did not comply with HUD regulations and requirements. The deficiencies and noncompliances are discussed below.

Legal Services Procured without A Contract

The Authority did not execute a contract for legal services; rather, it procured the services based on the bid proposal that was accepted in response to the request for proposals. On October 29, 2001, the Authority advertised a request for proposals for legal services for a period of three years. The scope of legal services requested encompassed the ordinary business and management of the Authority. The firm proposed to provide general legal services to the Authority on an annual basis for the annual sum of \$24,000. The proposal included 11 areas of services to be provided. However, the Authority never executed a written contract with the law firm.

By not executing a contract, the Authority did not obtain a legally binding document that would protect it against nonperformance by the contractor. Further, failure to execute a contract precludes the Authority from identifying the services expected to be completed and the period of performance.

Contract Payments Made without Adequate Supporting Documentation

Review of the supporting documentation for the legal services disclosed that the Authority routinely paid for the legal services without obtaining a bill or invoice as evidence that the services were provided.

Office of Management and Budget Circular A-87 provides that to be allowable under a grant program, costs must be necessary and reasonable for proper and efficient administration of the program. Making payments without consideration given to the level and extent of the services provided precludes the Authority from assuring that the costs incurred are necessary and reasonable and that the services contracted for have been provided.

Since payments were made for legal services without any bill or invoice to indicate that services had been provided, there is no evidence to show which of the 11 types of services were provided. Hence, the payments may not represent necessary operating expenditures; therefore, the amount paid during the audit period of \$46,666 is considered to be unsupported.

Labor Relations Services

In another instance, the Authority entered into a three-year contract with a law firm to provide labor representation services for the Authority's operations. The contract provided for a monthly payment based on the five areas of labor services to be provided, such as 1) comprehensive negotiating services for collective bargaining units; 2) consultation regarding rights and liabilities; 3) advice and representation in connection with contract grievances and matters before the Public Employment Relations Board; 4) management training in connection with employee corrective action, contract administration, and other agreed upon topics; and 5) periodic reports containing public-sector labor relations information.

The contract was executed on April 6, 2001, while the request for proposal was accepted on November 16, 2001; a clear indication of backdating the contract. Further, during the audit period, the law firm was paid \$62,015 for legal services; however, \$51,650 of the costs were not adequately supported since the billings submitted were unclear as to the actual services provided, merely stating, "For labor relations services rendered."

Chapter II of Public and Indian Housing Low-Rent Technical Accounting Guide, 7510.1G, stipulates that the public housing authority must maintain source documents and files that support the financial transactions recorded in the books of account and provide an adequate audit trail.

Since payments were made for legal costs without adequate documentation as to the services provided, the costs may not represent necessary or reasonable operating expenditures. Thus, the charges totaling \$51,650 are considered to be unsupported pending a HUD eligibility determination.

Failure to Enforce Elevator Contract Terms

The Authority did not enforce the damage clause of its elevator contract. On June 4, 2004, it executed a contract for elevator construction services. The contract stipulated that all contract work items, including any punch list items, must be 100 percent complete within 180 calendar days of the notice to proceed or by December 1, 2004. It further stated that if the contractor fails to complete all work covered under the contract within the established time parameters, the contractor will pay the Authority damages in the amount of \$150 per day for each day beyond the stated completion date that the work remains unusable for its intended purpose by the Authority.

Federal regulations at 24 CFR [*Code of Federal Regulations*] 85.36(b)(2) require public housing authorities to maintain a contract administration system which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts. However, contrary to these requirements, the Authority did not enforce the damages clause of the elevator contract.

Since the contractor had not completed the elevator work by the December 1, 2004, deadline, the Authority should have assessed penalties on the contractor. As a result, the Authority was deprived of \$33,150 in penalty income that should have been recovered from the elevator contractor and could represent funds to be put to better use when collected.

Auditing Services Improperly Procured

A contract for auditing services was improperly procured. The Authority's ranking/award process seems to preclude full and open competition. Documentation in the files shows that the Authority received two bid proposals; however, the ranking and rating of the two proposals showed that the contract was awarded to the higher bidder.

Federal regulations at 24 CFR [*Code of Federations*] 85.36 provide that all procurement transactions will be conducted in a manner that provides for full and open competition, and Office of Manament and Budget Circular A-87 requires costs charged to be necessary and reasonable for efficient operations.

Both proposals showed that the contractors had similar qualifications and relevant prior work experience. However, the Authority's ranking scores rated

the high bidder’s proposal as significantly better than that of the low–bidder even though the scope of services to be provided was the same for both bidders. Therefore, the Authority’s proposal evaluation and analysis of the criteria and categories considered in the evaluation process appear to be both inconsistent and restrictive to competition. For instance, one of the Authority’s ranking factors is based on previous experience with the contractor. Not only is this ranking factor unnecessary for the scope of services to be provided, but it also restricts competition since bidders that have not had a previous contract with the Authority receive a ranking of zero for this factor. A more appropriate factor is the Authority’s evaluation category that considers a bidder’s previous experience with conducting audits of federal programs and housing authorities. The Authority’s rating form also contained a ranking factor that considered cost as it relates to contract performance. However, the Authority did not accurately assign scores for this factor since the high bidder received a better score for this factor. Since the scope of services to be provided was the same for all bidders, it follows that the low bidder should have received the best score for this ranking factor.

Based on the above, the Authority did not properly procure this contract since the lower bidder did not win the contract. As a result, the Authority incurred unnecessary operating costs contrary to applicable program regulations. Consequently, the costs incurred in excess of the low bid amount are considered ineligible costs that should be repaid. A summary of the ineligible costs is as follows:

High-bid contract payments	\$ 46,750
Less: low-bid contract proposal	<u>(38,100)</u>
Ineligible costs incurred	<u>\$ 8,650</u>

Conclusion

The above deficiencies show that the Authority’s controls over procurements and/or contract awards did not ensure that costs incurred for procured contract services were reasonable and necessary.

Recommendations

We recommend that the director of HUD’s Office of Public Housing instruct the Authority to

- 2A. Establish controls to ensure compliance with all applicable federal, state and local procurement policies and regulations, to include compliance in the areas of (1) performing cost estimates and/or price analyses for all future procurement activities, (2) adequately soliciting and documenting all proposals submitted in response to a request for proposals for

professional services to substantiate the selection, and (3) properly executing contracts for all professional services provided.

- 2B. Provide documentation to justify the \$98,316 in unsupported costs (\$46,666 for legal services and \$51,650 for labor relations services) so that HUD can make an eligibility determination.
- 2C. Reimburse from nonfederal funds the amount of any unsupported costs determined to be ineligible.
- 2D. Enforce the damages clause of the elevator contract to ensure that the program is not deprived of \$33,150 in penalty income, thus resulting in funds to be put to better use. The penalty amount should also be increased if the work is not completed.
- 2E. Reimburse from nonfederal funds the ineligible costs of \$8,650 incurred from improperly procuring auditing services.

Finding 3: The Authority Did Not Fully Perform Monitoring Responsibilities as a Contract Administrator for HUD

The Authority, acting as a contract administrator for seven HUD-assisted Section 8 11B projects, did not fully perform the administrator's responsibilities. It failed to conduct the required oversight management reviews and on-site management reviews. It believed that the requirements had changed and the monitoring reviews were no longer necessary. As a result, there is a lack of assurance that the projects were administered in accordance with HUD Section 8 program requirements. Consequently, the Authority did not demonstrate that it fully earned the Section 8 administrative fees it was paid.

Contract Administrator for Seven Section 8 11B Projects

The Authority is the contract administrator for seven Section 8-assisted 11B projects consisting of 515 units. As contract administrator, the Authority is responsible for performing a comprehensive examination of the projects' operations through annual on-site management reviews and physical inspections of the projects. In addition, the Authority is required to conduct annual inspections on 25 of every 100 units under contract and on all vacant units. To compensate the Authority as contract administrator, HUD has authorized the payment of an administrative fee. The Authority received administrative fees for fiscal years 2003 and 2004 in the amounts of \$138,624 and \$140,658, respectively.

Contract Administrator Responsibilities Not Fully Performed

HUD Handbook 4350.5, paragraph 15-8, provides that the contract administrator must perform the following functions: a) assess the project's operating policies and procedures, b) determine known or suspected fraudulent practices, c) ensure rent requests are submitted in a timely manner, d) review project operating budgets, e) review rent collection procedures, f) conduct vacancy rate comparabilities, g) review reserve for replacement withdrawal requests, h) verify tenant selection, i) verify that pet ownership rules are established for the elderly and handicapped, j) review Section 8 utilization reports, k) verify distributions to project owners, l) review utility allowance adjustments, and m) review Section 8 special claims vouchers.

The Authority did not perform all of the contract administrator responsibilities as required by the handbook. It did not (a) perform on-site reviews during the past 10 years to review the project's operating policies and procedures, (b) determine

whether known or suspected fraudulent practices existed, (c) verify whether project owner and/or management agents were selecting tenants in accordance with program requirements, (d) review project leases to ensure that the house rules for pet ownership had been established, and (e) ensure that distributions were made to project owners.

By not performing all of the contract administrator responsibilities, the Authority was not assured that the owners and/or management agents understood and properly carried out their responsibilities to the projects.

Oversight Management Not Performed

HUD Handbook 4350.5, paragraph 15-1, requires contract administrators to provide oversight management of project owners and management agents to assure compliance with the terms of the Section 8 rental subsidy contract, HUD regulatory agreement, applicable HUD regulations, and other administrative requirements.

An Authority official, employed at the Authority since 1988, stated that the Authority had not monitored the owners and/or management agents of the seven Section 8 11B projects for at least 10 years. The Authority believed that the requirements had changed and that monitoring reviews were no longer necessary. In addition, the Authority official contended that the Authority did not have the resources to perform site monitoring due to the lack of adequate staff.

By not performing oversight management, the Authority was not assured that the projects were managed and maintained in accordance with HUD regulations, the subsidy contract, and administrative requirements.

On-Site Reviews Not Conducted

HUD Handbook 4350.5, paragraph 15-9, requires that on-site reviews of HUD-subsidized projects be conducted as an essential aspect of a contract administrator's monitoring. Further, contract administrators are required to perform the following types of on-site project reviews: on-site management reviews, physical inspections, and unit inspections.

For the seven projects reviewed, the required annual on-site management reviews and physical inspections were not performed. The Authority could not provide documentation to indicate the last time an on-site review had been performed at any of the seven projects. Consequently, the Authority did not have adequate assurance that the projects were being properly maintained and that Section 8 program assistance was provided to eligible tenants appropriately.

The Authority performed inspections on vacant units, as required; however, no unit inspections were performed on occupied units. HUD handbook criteria require that the Authority perform annual housing quality standards inspections for all vacant units and at a minimum, 25 percent of occupied units. Contrary to this requirement, there were no inspections performed on occupied units even though the majority of the 515 units under contract were occupied. Without adequate housing quality standards inspections, the Authority could not be assured that Section 8 assistance was provided only for units that were in decent, safe, and sanitary condition.

Conclusion

The Authority did not fully perform its duties as contract administrator for seven HUD-assisted Section 8 projects. The Authority did not perform oversight management and on-site reviews during the past 10 years. Since the Authority did not visit the projects, interview staff, or evaluate the project's policies and procedures, instances of known or suspected fraudulent practices may have gone undetected. In addition, there was no assurance that the owners and/or management agents selected tenants in accordance with HUD requirements. Further, the Authority did not review project leases to ensure that the house rules for pet ownership had been established and did not ensure that distributions were made to project owners.

Since the Authority failed to perform comprehensive examinations of the project operations through oversight management, on-site reviews, and physical inspections, it lacked assurance that the projects were administered in accordance with HUD Section 8 program regulations. Consequently, the Authority did not demonstrate that it fully earned the Section 8 administrative fees it was paid. Based on our analysis, the Authority did not succeed in performing at least half of the duties required of it as contract administrator. Accordingly, HUD should consider 50 percent of the administrative fee paid during fiscal years 2003 and 2004 or \$139,641 unsupported pending an eligibility determination.

Recommendations

We recommend that the director of HUD's Office of Multifamily Housing instruct the Authority to

- 3A. Implement procedures and controls to ensure that all of the contract administrator's responsibilities are performed and documented.
- 3B. Determine whether the Authority fully earned \$139,641 (50 percent) of the \$279,282 Section 8 administrative fee paid to it during our review period. If any of the fees are determined to be ineligible, that amount is to be reimbursed to HUD from nonfederal funds.

SCOPE AND METHODOLOGY

Our review focused on selected general operations of the Authority. To accomplish our objectives, we

- Interviewed HUD field office staff, as well as employees of the Authority.
- Reviewed applicable HUD regulations and requirements.
- Obtained an understanding of the Authority's management controls as they related to our objectives.
- Reviewed financial statements, the general ledger, and procurement contract files maintained at HUD and the Authority.
- Sampled procurement activities related to six contracts to verify the Authority's compliance with applicable HUD regulations and requirements.
- Reviewed program records for the low-rent housing and Section 8 programs.
- Reviewed Section 8 11B project files to verify the accuracy and completeness of the Authority's oversight and management.

The review covered the period between January 1, 2003, and April 30, 2005, and was extended when necessary. We performed our audit work from May through December 2005 at the Authority's office located at 509 Second Street, Utica, New York. The review was conducted in accordance with generally accepted government auditing standards.

INTERNAL CONTROLS

Internal control is an integral component of an organization's management that provides reasonable assurance that the following objectives are being achieved:

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls relate to management's plans, methods, and procedures used to meet its mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined the following internal controls were relevant to our audit objectives:

- Program operations – Policies and procedures that management has implemented to reasonably ensure that a program meets its objectives.
- Controls over the validity and reliability of data – Policies and procedures that management has implemented to reasonably ensure that valid and reliable data are obtained, maintained, and fairly disclosed in reports.
- Compliance with laws and regulations – Policies and procedures that management has implemented to reasonably ensure that resource use is consistent with laws and regulations.
- Safeguarding of resources – Policies and procedures that management has implemented to reasonably ensure that resources are safeguarded against waste, loss, and misuse.

We assessed the relevant controls identified above.

A significant weakness exists if management controls do not provide reasonable assurance that the process for planning, organizing, directing, and controlling program operations will meet the organization's objectives.

Significant Weaknesses

Based on our review, we believe the following items are significant weaknesses:

- The Authority did not have procedures to ensure that its program operations would meet all contract administrator responsibilities (see finding 3).
- The Authority did not have an adequate system to ensure compliance with laws and regulations relating to the payment of retiree medical insurance, the processing of procurement activities, and performing monitoring responsibilities as a Section 8 contract administrator (see findings 1, 2, and 3).
- The Authority did not have an adequate system to ensure that resources were properly safeguarded when it paid \$511,480 for unsupported retiree medical insurance costs and made questionable payments of \$140,116 for procurement activities (see findings 1 and 2).

APPENDIXES

Appendix A

SCHEDULE OF QUESTIONED COSTS AND FUNDS TO BE PUT TO BETTER USE

<u>Recommendation number</u>	<u>Type of questioned cost</u>		<u>Funds to be put to better use 3/</u>
	<u>Ineligible 1/</u>	<u>Unsupported 2/</u>	
1B	\$511,480		
2B		\$ 98,316	
2D			\$33,150
2E	\$ 8,650		
3B		\$139,641	
Total	\$520,130	\$237,957	\$33,150

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or federal, state, or local policies or regulations.
- 2/ Unsupported costs are costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.
- 3/ “Funds to be put to better use” are quantifiable savings that are anticipated to occur if an Office of Inspector General (OIG) recommendation is implemented, resulting in reduced expenditures at a later time for the activities in question. This includes costs not incurred, deobligation of funds, withdrawal of interest, reductions in outlays, avoidance of unnecessary expenditures, loans and guarantees not made, and other savings.

Appendix B

AUDITEE COMMENTS AND OIG'S EVALUATION

Ref to OIG Evaluation

Auditee Comments



David Williams, Chairman
Steven B. Kambic, Executive Director
509 Second Street, Utica, New York 13501
Telephone 315-735-5246 FAX 315-735-3366
Established 1937

February 1, 2006

Edgar Moore
Regional Inspector for Audit
U.S. Department of Housing and Urban Development
Office of Inspector General
26 Federal Plaza, Room 3430

Dear Mr. Moore:

Attached is information for your consideration in response to the draft IG report dated January 20, 2006. This Initial Response to IG Draft Report is provided for inclusion to your assessment during the IG exit conference scheduled for February 1, 2006.

As per my direction, certain staffs have been tasked with formulating specific responses and gathering information relevant to your inquiry. Staffs in receipt of the draft report were informed not to release any of the information contained in the draft IG report.

If you have any questions, please do not hesitate to contact me at (315) 735-5246.

Sincerely,


Steven B. Kambic
Executive Director

Attachment

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

MUNICIPAL HOUSING AUTHORITY OF THE CITY OF UTICA, NEW YORK
INITIAL RESPONSE TO IG REPORT
FEBRUARY 1, 2005

Background

The information in this report is in response to a draft report of the HUD Inspector General (IG) dated January 20, 2006. This report and its attachments are provided by the Municipal Housing Authority of the City of Utica (MHA) for consideration by the HUD IG for an exit conference occurring February 1, 2006.

Finding 1: The Authority Provided Unauthorized Medical Insurance Benefits to Retirees

HUD IG ASSERTION

The HUD IG asserts that a board resolution dated December 27, 1994 did not authorize the payment of any medical health insurance benefits to retirees who retired after December 27, 1994 nor the benefits of prescription or dental riders. Payments for these benefits during the period January 1, 2003 through June 30, 2005 amount to \$511,480 were not authorized, are considered not necessary or reasonable and should be considered to be ineligible.

MHA RESPONSE

A December 27, 1994 board resolution indicated that health insurance benefits are no longer authorized for Medicare eligible retirees. Prior to initiation of this HUD IG audit, the MHA had already solicited health insurance brokers for the purpose of investigating retiree health costs and responsibilities. The results of this investigation were provided to labor counsel who urged a cautious approach to changing insurance coverage so as not to unnecessarily expose the MHA to litigation or insurance claim liabilities far in excess of any presumed cost savings. After board discussions with legal counsel and the insurance broker over a period of months, the board adopted multiple resolutions on April 7, 2005 to alter health insurance benefits for retirees.

As guided by legal counsel, the board eliminated as of October 1, 2005, all insurance coverage to persons who separated from the MHA and became eligible for New York State Retirement Disability. This action applied only to former employees not affiliated with the Civil Service Employees Association (CSEA).

Comment 1

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

On January 9, 2006, in consultation with legal counsel and as guided by an insurance broker, the board resolved to change health insurance coverage to Medicare eligible retired persons not affiliated with the CSEA (see Attachment 1a). Effective February 1, 2006, non-CSEA Medicare eligible retirees are only eligible for health insurance assistance consisting of an annual \$500 stipend for Medicare D coverage and \$1000 for two persons. By this action, non-CSEA affiliated Medicare eligible retirees will no longer receive health insurance covered by the MHA and instead will have to apply directly for Medicare D with the sole MHA benefit of an annual stipend provided through approved Medicare deduction.

On January 9, 2006, as directed by legal counsel, the board affirmed that that changes to health insurance provided to all CSEA affiliated retirees would be made after legal counsel completed accomplished a Declaratory Judgement now before the court and being opposed by the CSEA. This court action was initiated months ago and after delays caused by CSEA, the MHA is now filing the Affidavit in Support of Motion for Summary Judgement (see Attachment 1b). By obtaining a Declaratory Judgement for the purpose of stipulating the MHA's legal responsibilities before changing insurance benefits, the MHA protects itself from extraordinary insurance claim liabilities and utilizes resources in the most efficient and effective manner.

All persons who have separated or retired from the MHA and now receiving health insurance are over 65 years of age. All such persons not affiliated with the CSEA are eligible only for a \$500 annual stipend provided that they apply directly for Medicare D. All other retirees, all being CSEA affiliated, are not to have health insurance altered until the resolution of a Declaratory Judgement as directed by legal counsel. Based upon the thorough and conscientious action taken by the Authority over the last two years, initiated prior to any investigation by the HUD IG, the Authority has already made and continues to make significant progress at reducing its provision of health insurance assistance, if any, provided to retirees. Based on these actions, the Authority has demonstrated its ability to promote economy and efficiency of health insurance coverage for retirees that is both necessary and reasonable. For these reasons, HUD should not consider the MHA liable for reimbursement to HUD of previous health insurance payments to retirees due to constructive and appropriate action that has been taken as directed by legal counsel and guided by an insurance broker.

HUD IG ASSERTION

Although the MHA has taken positive steps to reduce health insurance costs to retirees, scarce resources were expended without proper authorization. Accordingly, better controls are needed to ensure that board policies and procedures are implemented in a timely manner.

MHA RESPONSE

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 2

The MHA has instituted measures to establish better implementation of board policies in a timely manner. To improve better communication regarding board matters, the managers routinely meet to discuss items that need to be presented to the board as well as to assign those persons to carry out board directives according to Managers Roundtable Report (see Attachment 1c). To better control implementation of board policies and procedures, a Board Directives Compliance Book is being created. This loose leaf notebook contains a checklist to include the following:

- Date of board directive;
- Copy of directive (ie. Resolution or Recommendation);
- Sign-off of Manager assigned to implementation of board directive; and
- Date of accomplishment of board directive.

Finding 2: The Authority's System for Procuring Contracts is Deficient

The MHA's procurement and contract award activities did not always comply with HUD regulations and requirements. These deficiencies can be attributed to the MHA's weak system of controls over the processing of procurement actions. As a result, the MHA incurred questionable costs of \$142,126 and could not insure that costs incurred for procured contract services were reasonable and necessary.

HUD IG ASSERTION

The MHA procured general legal services in response to a request for proposals. The MHA failed to execute an accompanying contract with the law firm.

Comment 3

MHA RESPONSE

The MHA typically relies upon general counsel to prepare contracts with vendors for legal services. It was an oversight not to prepare a general counsel contract for the term in question, however, the MHA assumed that the previous agreement with counsel was extended as a result of said procurement procedure. The MHA has instituted a Board Directives Compliance Book to insure proper follow-up of board resolutions including execution of contracts following award.

HUD IG ASSERTION

The MHA paid for general legal services without obtaining a bill or invoice thus totaling \$46,666 of unsupported payments.

MHA RESPONSE

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 4

The MHA was unaware of the requirement to obtain detailed invoices for services rendered on a retainer basis. The MHA will therefore request monthly itemized statements of previous services rendered and require henceforth itemized detailed invoices showing the hourly rate applied and the type of service performed. By taking these measures the MHA believes previous payments are supportable.

HUD IG ASSERTION

The MHA executed a labor relations contract on April 6, 2001, while the request for proposal was accepted on November 16, 2001; a clear indication of backdating the contract. Invoicing for services are not adequately supported by submitting a statement indicating "For labor relations services rendered". For the audit period utilized, \$51,560 are considered to be unsupported pending a HUD eligibility determination.

MHA RESPONSE

Comment 4

The board unilaterally decided to change labor attorneys based direct negotiation and told management to conduct procurement after the award. This was one of two professional service contracts for which MHA management informed HUD that it believed procurement was done improperly. The procurement issues were subsequently examined by HUD as part of a Consolidated Review.

The MHA is now aware of the requirement to obtain detailed invoices for services rendered on a retainer basis. The MHA will therefore request monthly itemized statements of previous services rendered and require henceforth itemized detailed invoices showing the hourly rate applied and the type of service performed. By taking these measures the MHA believes previous payments are supportable.

HUD IG ASSERTION

The MHA did not enforce the damage clause of its elevator contract. Since the contractor had not completed the elevator work by December 1, 2005, deadline, the MHA should have assessed liquidated damages on the contractor. As a result, the MHA was deprived of \$33,150 of penalty income that could be put to better use when collected.

MHA RESPONSE

Comment 5

Given the very unique circumstances that the Authority was presented with during the administration of the Marino- Ruggiero Elevator Project and the fact that that the actual damages suffered as a result of the delays were very minimal, the imposition of liquidated damages may not be warranted or difficult to establish.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 5

The MHA made a decision to allow [REDACTED] to remobilize his work forces and focus his efforts on executing and completing the MHA's HOPE VI Project knowing full well that this decision would negatively impact the schedule for the Elevator Project. [REDACTED] was simply not large enough in size to execute both contracts simultaneously. This decision which ultimately led to delays in the execution of the elevator contract allowed the MHA to achieve the goal of getting the Housing Authority's HOPE VI Project back on track and avoid any risk of losing future HOPE VI Project funding. Based on the above extenuating circumstances, the MHA made a priority determination that essentially extended the completion deadline of the elevator contract. The MHA believes that this decision was the correct since it ensured continued funding for the HOPE VI Project coupled with the fact that the project was successfully completed and the actual monetary damages suffered by the MHA as a result of the delays were very minimal in nature.

The Marino-Ruggiero Apartment building was constructed in 1982 with only one elevator. This project involved the construction of a second elevator for resident use. Considering the fact that this building never had a second elevator, the damage to the MHA and the residents was minimal.

Background to Elevator Contract

Causes for delay for this project were due to a combination of factors, however the predominant reason was the result of the following:

Subsequent to the award of the Elevator Project at Marino-Ruggiero Apartments, [REDACTED] was awarded the HOPE VI Phase II Steuben Village Rental Housing Development Project. The Steuben Village Rental Housing Project involved the new construction of 15 new multi-family buildings and the rehabilitation of 4 existing multi-family buildings containing a total of 49 units of housing. It is very important to note that [REDACTED] was the only contractor that met the developer's budget.

The HOPE VI Project has several critical compliance checkpoints or milestones that the Housing Authority must meet or risk losing project funding. At the time of the HOPE VI Project contract award to [REDACTED] the Housing Authority had already missed one critical checkpoint, the start date for the HOPE VI Phase II Steuben Village Rental Housing Development Project and was in imminent danger of missing the completion date. With HUD threatening to send a warning letter to the MHA for missing a critical compliance checkpoint it was important that the Steuben Village Project get on track to meet the critical checkpoints. Failure to meet another critical HOPE VI compliance checkpoint would have placed the Housing Authority at risk of losing future Project funding.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 5

The initial delays that occurred with the Elevator Project at Marino-Ruggiero Apartments allowed [REDACTED] to mobilize his work forces to perform the HOPE VI Phase II Steuben Village Rental Housing Development Project. Due to the enormous pressure on the MHA to meet the critical HOPE VI Project checkpoints, the MHA was tolerant of the contractor's failure to meet the project schedule for the Marino-Ruggiero Elevator Project. With the Housing Authority resigned to allow [REDACTED] to focus his efforts on executing and completing the Steuben Village Rental Housing Development Project, the schedule for the completion of the work on the Elevator Project at Marino-Ruggiero Apartments was knowingly delayed and extended. However, [REDACTED] did achieve our goal of getting the HOPE VI project back on track allowing the MHA to meet all of our critical checkpoints.

Enforcing the Elevator Contract Liquidated Damages Clause

In the administration of a contract that includes liquidated damages the MHA should take all reasonable steps to adequately warn Contractors of the pending assessment when concern of late completion develops. However, the warning letters were never sent to [REDACTED], since the MHA made a conscientious decision to allow the contractor to remobilize his work forces and focus his efforts on executing the MHA's HOPE VI Project. This decision was made since the perceived damage to the Authority for delays to the Elevator Project were minimal in nature. [REDACTED] was simply not large enough in size to simultaneously complete both projects. This decision was made with the best interest of the MHA in mind.

Liquidated Damages Clause for Elevator Contract

Legal counsel for the MHA has advised that the rate of liquidated damages used in each contract must be reasonable, and must be considered on a case-by case-basis, since liquidated damages fixed without any reference to probable actual damages may be held to be a penalty, and therefore unenforceable.

Construction delays are injurious to all parties. Injury to the contractor includes direct job expenses, indirect costs (such as office expenses, salaries of office personal and the like) and adversely impacts the profitability of the job for the contractor. Damages for delay to the MHA are much more difficult to measure.

Causes for delay on the Elevator Project were due to a combination of factors. Part of the delay on this project is due to the fault of the contractor and some is due to the Housing Authority. Thus, there is a problem of apportionment of damages for delay. Another part of the problem is determining the amount by which the delay in one portion of the job contributed to the delay in the completion of the entire project. For example, the contractor may claim the job was delayed by the architect's failure to make a prompt review and approval of project submittals or project issues. The Architect on the other hand can argue that the delay in approving a submittal should not have prevented the contractor from completing other work unrelated to the submittal or issue under review.

6

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 5

To be enforceable, liquidated damages must bear a direct relationship to actual damages. The MHA must therefore identify the types of damages that the Authority incurred as a result of the delays. The amount of liquidated damages should be carefully computed or they could be deemed unenforceable if ultimately subjected to legal challenge.

Given the unique conditions surrounding the Marino-Ruggiero Elevator Project and the fact that the monetary damage to the MHA was insignificant, enforceability of the liquidated damage clause may be very difficult at best. Furthermore, due to the nuisance value of the potential litigation that may ensue, it would be in the best interests of the MHA to not attempt to enforce the liquidated damages clause on this particular contract at this time. However, under normal conditions, the MHA should enforce the liquidated damage clause of the construction contracts for delays caused by the contractor.

Initial Delay to Elevator Contract

- The new door cutout for the storage room passageway in the basement was moved approximately 1.5 feet to the left of the location indicated on the structural drawings since the location indicated was in conflict with concealed electrical feeders to the building. Due to the structural implications of the contractor's actions this project was delayed pending a thorough review and analysis by the structural engineer on this project, [REDACTED]. On June 22nd, 2004 the contractor was required to stop work pending a review and resolution to the structural issues resulting from the contractor deviating the door location from the original project plans and specs. On September 13th, 2004, [REDACTED] Architects, P.C. notified [REDACTED] via fax (almost three months after the stop work date) of the resolution to the door location deviation. It was during the initial delay that the contractor remobilized his work efforts to executing and completing the HOPE VI Phase II Steuben Village Project.

Elevator Contract Project Description

- Constructing an elevator within an existing five story building involving numerous cuts into a 10" solid masonry load bearing wall on all five levels and overcoming an existing footing step that intrudes into the new elevator pit interfering with the new elevator equipment poses some very unique conditions. To overcome the problems these condition present required a lot of careful attention and consideration. All this work has to be completed within very close tolerances required for an elevator construction project further complicating the submittal process. Submittals and changes were not always processed expeditiously resulting in further contractor delays. Please see the attached memorandum dated July 5th, 2005 (Attachment 2a) detailing the various delays that have occurred on this project.

Due to the extenuating circumstances, the MHA believes it acted in the best interests of the efficiency and economy of resources, by not enforcing liquidated damages upon the elevator contractor and thereby facilitating the timely completion of a HOPE VI project.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 6

HUD IG ASSERTION

A contract for auditing services was improperly procured resulting in award to the higher bidder. Based on this conclusion, \$8,650 of ineligible costs were incurred.

MHA RESPONSE

The MHA issued an Audit Request for Proposals (RFP) for the fiscal years ended June 30, 2002 through June 30, 2004 on February 11, 2002. Included in the RFP packet labeled "Attachment #1" was the Evaluation Criteria Weighting Factors" that would be used to "Rate and Rank" perspective bidders.

Factor Number 6 of the RFP carried a weighted score of 10 out of 100, being the "Auditors prior experience as Auditor or Fee Accountant with the Utica Housing Authority." The MHA believes that this Factor is valuable in the assessment of bidders for the following reasons:

1. OMB Circular A-110, Subpart C, Subsection .44, Procurement Procedures; (d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. The Authority believes that Factor Number 6 falls within the requirements noted in this subsection based on the consideration of the matter of "record of past performance." As noted in your draft finding, this factor benefited the Auditor that had previous experience with the Authority. We further believe this was rightfully so given the satisfaction the Authority had in his past performance. Conversely, however, this factor could have also worked against the Auditor had his previous experiences with the Authority been unsatisfactory.
2. Utilizing an Auditor that has previously worked with the Authority allows the Auditor to focus his attentions on different areas than they had in the past, thus broadening and consistently increasing the scope of the auditing services.
3. Utilizing an Auditor that is familiar with the Authority's record keeping and files reduces the amount of staff time required to bring the Auditor up to speed and allows the Auditor more time to spend on field work.

Comment 7

Factor Number 4 of the RFP carried a weighted score of 5 out of a possible 100 points and was the "Reasonable overall cost based on scope of service." When evaluating the Proposals submitted the Authority utilized the following theories:

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 7

1. The low bidder did not include the "estimated man-days" by category in their original response. This was noted by the Authority when the evaluation process began. The Authority felt that this information was vital in determining the value of services and therefore, requested the information. The requested information was received via facsimile on March 21, 2002 and included the following:
 - a. Partner (Principal): \$150 per hour
Estimated man-days: 4
 - b. Senior (Manager): \$ 70 per hour
Estimated man-days: 10
 - c. Semi-Senior: \$ 60 per hour
Estimated man-days: 6
 - d. Junior: \$50 per hour
Estimated man-days 10

TOTAL	\$12,700 per year
Total Estimated man-days	30

When a breakdown of the information received was performed, the Authority determined that the total audit cost quoted was not consistent with the hourly rates and estimated man hours quoted. In fact upon calculating the estimated Audit cost based on the information received, assuming a 7 hour man-day the Authority arrived at a total audit cost of \$15,120. Although it was understood by the Authority that the man days were an estimated figure and that the low bidder could not charge more than the total audit cost quoted in the audit, it left those ranking this proposal to question the cost basis used. Would the low bidder actually spend less time on the Audit than originally estimated in order to cover their internal costs??

2. The Authority then decided it would be fair and equitable to compare hourly rates. The high bidder indicated in his proposal that it would take an estimated 28 man-days at \$55 per hour and all services would be performed by the Partner (Principal) working a 10 hour man-day. Taking this into account the Authority determined that a true comparison of Partner to Partner between the two bidders gave leverage to the higher bidder. Although the total audit cost was quoted at \$2,700 more per year, the quality of work performed as it related to the cost was determined to be more cost effective on the part of the high bidder, due to significantly more time utilized by the partner and therefore the justification was made to rank the high bidder with a higher score in the overall cost factor than the low bidder.
3. According to the Yellow Book standards, Chapter 4, Section 4.03A, Field Work Standards, all field work must be adequately planned and assistants, if any, be properly supervised. It was the Authority's understanding during the evaluation process that the low-bidder planned to utilize a Partner (Principal) or Certified Public Accountant for only 4 man-days and that the remainder of the audit process would be performed by staff other than a Certified Public Accountant.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 8

Lastly, the total amount of questioned ineligible costs incurred of \$8,650.00 includes an amount of \$550.00 that was billed by the Auditor for additional reporting that was requested by the then Chairman of the Board of the Authority that was above and beyond the contract requirements. Also included in this amount are those costs allocated among non-federal programs (New York State Programs). Based on this analysis, the MHA believes the method for procuring auditing services to be appropriate and proper. The MHA is however open to specific recommendations concerning the use of prior experience as a rating factor.

HUD IG ASSERTION

The MHA procured the services of a financial consultant without obtaining the required cost/price analysis. As a result, the amount paid of \$2,100 is considered unsupported, pending a reasonableness determination by HUD.

MHA RESPONSE

The MHA assumed that it provided to the IG all applicable files concerning this procurement. Upon searching its records, the MHA located a certified cost analysis, memo from HUD and cost analysis notes (see Attachment 2b). Based on the records available for review, the MHA believes the procurement was performed properly.

Finding 3: The Authority Did Not Fully Perform Monitoring Responsibilities as a Contract Administrator for HUD

HUD IG ASSERTION

The MHA is the contract administrator for seven Section 8-assisted 11B projects consisting of 515 units. As contract administrator, the MHA is responsible for performing a comprehensive examination of the projects' operations. The MHA received administrative fees for fiscal years 2003 and 2004 in the amounts of \$138,624 and \$140,658, respectively. Based on analysis, HUD should consider 50 percent of the administrative fee paid during the fiscal years 2003 and 2004 or \$139,641 unsupported pending an eligibility determination.

MHA RESPONSE

Comment 9

CONTRACT ADMINISTRATOR RESPONSIBILITIES
REGULATIONS AS LISTED IN 4350.5.
CHAPT. #15-8.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 9

a. HUD REGULATION: Assess the Project's Operating Policies and Procedures and interview management agent and project employees to be sure that the owner/management agent and staff understand their roles and responsibilities to the project.

MHA RESPONSE ~ COMPLIANCE:

MHA staff currently converse no less than two to three times a week with on-site project management; as well as middle and upper management personnel; and occasionally, if warranted; financial personnel of each 11-b Complex; assisting them in their basic needs (e.g. occupancy questions/problems); to more complex requests (e.g. assistance with re-financing). MHA staff are at the service of each of the 11-b complex's assisting with any and all of their needs and requests, including, but not limited to HUD regulations, forms, and/or handbooks. MHA staff sense that if inconsistencies with on-site staff, personnel, and operations were occurring; evidence of such would had been manifested in those frequent conversations.

MHA will now also require annual copies of independent auditors' reports for each project; reflecting financial reviews, internal operations, management practices, recordkeeping, procurement procedures, staffing and issues surrounding such, all to be submitted in a timely manner in order to better comply with this regulation.

b. HUD REGULATION: Determine if there are known or suspected fraudulent practices, waste or mismanagement.

MHA RESPONSE ~ COMPLIANCE

MHA staff currently validate and intricately examine all financial requests for HAP renewals/alterations; special claims for vacancies, damages, and/or unpaid rent claims on a monthly basis. These studies verify accuracies, details, additional data submissions, and non-duplicative remittance of claims; therefore negate any fraudulent activities surrounding these areas.

MHA will now also require annual copies of independent auditors' reports for each project; reflecting financial reviews, internal operations, management practices, recordkeeping, procurement procedures, staffing and issues surrounding such, all to be submitted in a timely manner, in order to better comply with this regulation.

Comment 9

c. HUD REGULATION: Ensure that rent increase requests are submitted in a timely manner.

MHA RESPONSE ~ COMPLIANCE

MHA currently monitors annual anniversary dates of HAP contracts for each of the seven 11-b complex's in order to assist each project with its request for rent increases, mark to market submissions, contract renewals with current rents at or below comparable market rents, referrals to OMHAR (Office of Multifamily Housing Assistance Restructuring), and rent comparability studies when warranted.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 9

d. HUD REGULATION: Review project operating budgets, to determine if expenditures are exceeding the amounts established in the approved project budget.

MHA RESPONSE ~ COMPLIANCE

MHA will now require annual copies of independent auditors' reports for each project ; reflecting financial reviews, internal operations, management practices, recordkeeping, procurement procedures, staffing and issues surrounding such, all to be submitted in a timely manner, and in order to better comply with this regulation.

e. HUD REGULATION: Review procedures for collecting rent.

MHA RESPONSE ~ COMPLIANCE

MHA will review rent collection procedures during their annual on-site review in compliance with HUD form #9834. We feel our continuous contact with and assistance to; pertinent on-site personnel would reflect any problems which occurred in the past or present regarding these procedures

f. HUD REGULATION: Determine if the vacancy rate is comparable to other projects in the area.

MHA RESPONSE ~ COMPLIANCE

MHA currently reviews each project's monthly activity submission HUD #52670, comparing vacancy rates to similar public housing units. If vacancy rates prove to be abnormally high, MHA will initiate investigative procedures into their leasing procedures, with a follow up study if necessary.

g. HUD REGULATION: Review the requests for reserve for replacement withdrawals.

MHA RESPONSE ~ COMPLIANCE

MHA currently reviews all requests for withdrawals from replacement reserve from each complex. We then compare and coordinate data to HUD regulations #4355.1; Appendix #6 a list of acceptable items which replacement reserves may be utilized for. After which the request is submitted to HUD/Buffalo for their review and approval and/or disapproval.

h. HUD REGULATION: Verify that the owner/management agent is screening and selecting tenants in accordance with HUD regulations.

MHA RESPONSE ~ COMPLIANCE

MHA will review rental procedures during their annual on-site review in compliance with HUD handbook 4350.3, rev#1. We feel our continuous contact and assistance with pertinent on-site personnel would reflect any problems which occurred in the past or present regarding these procedures. Each of the 11-b complexes has recently updated their software in order to comply with HUD eligibility criteria.

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 9

i. HUD REGULATION: Verify that house rules for pet ownership have been established at projects for the elderly or handicapped in accordance with HUD regulations from handbook 4350.1.

MHA RESPONSE ~ COMPLIANCE

MHA has, from previous on-site visits acquired pet policies for each of the 11-b complexes.

j. HUD REGULATION: Review HUD form-52684, report on Section 8 program utilization for each project, rent rolls, monthly vouchers, and other project records.

MHA RESPONSE ~ COMPLIANCE

MHA, in the past, reviewed "hard copies" of submitted program utilization reports submitted. Due to a change in HUD regulations, MHA now transmits all such data via TRACS transmittals electronically for each 11-b project on a monthly basis. If program utilization inconsistencies occur, we anticipate notification from the TRACS website.

k. HUD REGULATION: Verify that distributions to the project owner are in accordance with the provisions described in HUD regulations.

Comment 9

MHA RESPONSE ~ COMPLIANCE

MHA will now require annual copies of independent auditors' reports for each project ; reflecting financial reviews, owner distributions, internal operations, management practices, recordkeeping, procurement procedures, staffing and issues surrounding such, all to be submitted in a timely manner, and in order to better comply with this regulation.

l. HUD REGULATION: Review the adjustment of utility allowances.

MHA RESPONSE ~ COMPLIANCE

MHA currently review and offer guidance and approval/disapproval to all utility allowance data submitted by each complex.

m. HUD REGULATION: Review Section 8 Special Claims Vouchers in accordance with Chapt. #6 of HUD/Handbook 4350.3.

MHA RESPONSE ~ COMPLIANCE

MHA currently review and approve and/or disapprove special claim vouchers at least 30-60 days prior to payment. All attachments are reviewed for compliance and either approved or rejected based on those submissions. Each special claim whether for unpaid rent claim, vacancy loss, or damage claim is manifested and tracked in order to prohibit duplication.

REGULATIONS AS LISTED IN 4350.5

CHAPT. #15-9

ON SITE REVIEWS

Appendix B

AUDITEE COMMENTS AND OIG's EVALUATION

Ref to OIG Evaluation

Auditee Comments

Comment 9

A. HUD REGULATION: MANAGEMENT REVIEWS: On site management reviews will focus primarily on the efficiency and effectiveness of the projects operating policies & procedures.

MHA RESPONSE ~ COMPLIANCE:

MHA will focus on management policies and procedures during our scheduled on-site reviews. Currently MHA staff converse at least two to three times a week with on-site project management; as well as middle and upper management personnel; and occasionally, if warranted; with financial personnel of each 11-b Complex; assisting them in their basic needs (e.g. occupancy questions, problems) to more complex requests (e.g. assistance with re-financing). MHA staff is at the service of each of the 11-b complex's assisting with any and all of their needs and requests, including, but not limited to HUD regulations, forms, and/or handbooks. MHA staff sense that if inconsistencies with staff, personnel, and operations were occurring, these would surface during these conversations.

B. HUD REGULATION: Physical Inspections. The purpose of the physical inspection is to determine whether the owner is providing decent, safe, and sanitary housing. The physical inspection examines the condition of the project's buildings, grounds, and mechanical systems and assesses whether project management is completing preventative and corrective maintenance in a timely fashion.

MHA RESPONSE ~ COMPLIANCE:

MHA will conduct through physical inspections of each of the 11-b projects utilizing HUD form #9822 during the on-site review process. MHA currently conducts move-in, move-out, damage claim, and vacancy loss claim inspections on a weekly basis. (See attachment #1).

C. HUD REGULATION: Unit Inspections. A unit inspection must be performed annually on Section 8 units to determine compliance with HQS standards as required under Section 8 regulations.

MHA RESPONSE ~ COMPLIANCE:

MHA currently conducts unit inspections for move-in, move-out, damage claim units, and vacancy loss units on a weekly basis. (see attachment # 1).

Based on the foregoing, the MHA respectfully submits that administrative fees were properly earned and that site inspections and other monitoring review will be more thoroughly documented in the future.

Comment 9

OIG Evaluation of Auditee Comments

Comment 1 Officials of the Authority state that all persons who have separated or retired from the Authority and now receiving health insurance are over 65 years of age. All persons not affiliated with the CSEA are eligible only for a \$500 annual stipend provided that they apply directly for Medicare D. All other retirees, all being CSEA affiliated, are not to have health insurance altered until the resolution of a Declaratory Judgment as directed by legal counsel. Based upon the thorough and conscientious action taken by the Authority over the last two years, initiated prior to the HUD OIG review, the Authority has made and continues to make significant progress at reducing its provision of health insurance assistance provided to retirees.

While the Authority has demonstrated its ability to promote economy and efficiency of health insurance coverage for retirees, the Authority is still responsible for the actions taken in the past. As such, the Authority is therefore liable for reimbursement to the low-income housing program for the \$511,480 of previous health insurance payments to retirees who did not meet the board requirements for receiving health, dental and prescription benefits.

Comment 2 The Authority's actions are responsive to our recommendations.

Comment 3 Officials for the Authority contend that it was an oversight not to prepare a general counsel contract based on the assumption that the previous agreement with the legal counsel had been extended. As such, the Authority has instituted a Board Directives Compliance Book to insure proper follow-up of board resolutions including execution of contracts following award.

Comment 4 Officials for the Authority were unaware of the requirement to obtain detailed invoices for services rendered on a retainer basis. As a result, if the supporting documentation cannot be provided, the Authority should reimburse HUD the \$46,666 paid for legal services and the \$51,650 paid for labor relations' services.

Comment 5 Officials for the Authority contend that the imposition of liquidated damages may not be warranted or is difficult to establish because the actual damages suffered by the Authority was very minimal. The Authority admits that a priority determination had been made that essentially extended the completion deadline of the elevator contract, knowing full well that this decision would negatively impact the schedule for the elevator project.

Federal regulations (24 CFR 85.36(b)(2)) requires the Authority to maintain a contract administration system, which ensures that contractors perform in accordance with the terms, conditions, and specifications of their contract. As such, the imposition of liquidated damages is not difficult to establish; the contract with the contractor provides that damages would be assessed in the amount of \$150 a day for each day beyond the stated completion date that the work is not usable for its intended purpose. The purpose of this specific contract clause is to (1) protect the legal rights of all parties involved, and (2) clearly detail the process for remediation when either party fails to perform as agreed to. Since the contractor was well over its time for completion, the Authority did not act in the best interests of efficiency and economy of resources by not enforcing liquidated damages upon the elevator contractor. Thus, the low-income housing program has been deprived of the \$33,150 in penalty income; therefore we maintain that our recommendation to enforce the damage clause of the contract be implemented.

Comment 6 Officials for the Authority contend that the request for proposal factor number 6 requiring prior experience as auditor or fee accountant with the Authority is valuable in the assessment of bidders and is weighted more, in accordance with OMB Circular A-110 Subpart C, Subsection 44 (d). However, we disagree that the factor should be weighted so excessively to the point that it restricts competition. OMB Circular A-110 Subpart C, Subsection 44 provides that all procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Comment 7 Officials for the Authority contend that when evaluating factor number 4 pertaining to overall cost based on scope of service, the total audit cost quoted by the low bidder was not consistent with the hourly rates and estimated man hours quoted. The Authority decided it would be fair and equitable to compare hourly rates, which we agree is a fair and equitable method. However, the Authority misinterpreted the Yellow Book standards pertaining to the proper supervision of fieldwork. The Authority felt because the low bidder proposed to use staff other than a Certified Public Accountant for a portion of the audit process, the quality of work proposed would be deficient. This inaccurate interpretation of the standards resulted in the high bidder being unjustly awarded the contract. Consequently, the costs of \$8,650 incurred in excess of the low bidder are considered ineligible and should be reimbursed to HUD.

Comment 8 Upon review of our draft audit report, officials for the Authority provided a certified cost analysis and documentation from HUD supporting the procurement of services provided by a financial consultant. As a result, we concluded that the services of the financial consultant were procured

properly and the payment of \$2,100 for such services is supported. Consequently, this issue has been eliminated from our final report.

Comment 9 Officials for the Authority contend that all of the required contract administrator responsibilities as required by the HUD Handbook are either now currently being carried out or will be implemented. As such, this gives credence to the fact that the Authority did not fully earn at least 50 percent of the administrative fee paid to it during our review.